

be ordered to refund it, and Green in any event cannot be held liable until their inability is ascertained. It is not, however, to be understood, that, in the opinion of the court, Green would be liable in the latter event, that question being reserved. The court will pass an order, referring the case to the Auditor, with such directions, as can at this time be given; and reserving such questions, as cannot now be safely decided.

[No appeal was taken from this order.]

DIXON ET AL. }
 vs. } SEPTEMBER TERM, 1848.
 DIXON ET AL. }

[CHANCERY PRACTICE—LIMITATIONS.]

WHERE a claim has been submitted to, and adjudicated upon, by the court, and finally rejected, through the negligence of its owner, he will not be allowed to re-open the judgment of the court, and ask for and obtain a re-hearing upon additional proof.

But, where no adjudication has been had upon the claim, and the fund for distribution remains in court, equity requires that the new proof should be considered, and if found sufficient to remove the objection to it, the claim should be allowed.

When funds are in this court for distribution among creditors and the Auditor reports, that certain claims have not been proved, or objections for want of proof, made to their allowance by parties interested, the case is again referred to the Auditor, with directions to state a final account, from which all claims not then sufficiently proved, are to be excluded, and leave is given to supply the proof upon such terms, as to notices, as may be deemed reasonable. Upon the coming in of the report of the Auditor, made pursuant to the order, and after the usual time given for filing exceptions, the report may be submitted for ratification, and when ratified, all parties are concluded, and the litigation is terminated.

This is the general rule; but, there may be cases in which it would and ought to be relaxed, when the party seeking relief can show himself free from blame or negligence.

When limitations are relied upon, the defence avails only in favor of the parties who set it up.

[This was a creditor's suit, and the Auditor's report, with the statement of claims, having been set down for hearing on